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**IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION**

GENTEX CORPORATION and INDIGO
 TECHNOLOGIES, LLC,

Plaintiffs,

THALES VISIONIX, INC.,

Involuntary Plaintiff,

v.

META PLATFORMS, INC. and META
 PLATFORMS TECHNOLOGIES, LLC,

Defendants.

Case No. 4:22-cv-03892-YGR

**REPLY IN SUPPORT OF JOINT
 MOTION TO DISMISS**

REDACTED

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I. INTRODUCTION

Involuntary plaintiff Thales does not dispute that it has no claims in this case. Indeed, Thales declares that it “has no desire to maintain this litigation, especially when the actual litigants, Gentex and Meta, want to terminate.” Dkt. No. 145-3 (“Resp.”) at 6. These facts alone are sufficient for the Court to grant this Joint Motion and dismiss the case with prejudice.

As Gentex and Meta (collectively, the “Moving Parties”) noted in their Joint Motion to Dismiss, the basis for dismissal with prejudice is the release and covenant not to sue that Gentex granted to Meta in the 2024 Settlement Agreement between Gentex and Meta. *See* Dkt. No. 137-3 (“Mot.”) at 1. Although Thales was not a party to the 2024 Settlement Agreement, that agreement is nonetheless sufficient to deprive this Court of jurisdiction over any continuing litigation because the only claims in this case were those raised by Gentex, and the 2024 Settlement Agreement between Gentex and Meta fully resolved all of those claims.

Thales’s Response raises a host of issues about the separate, 2023 Term Sheet that Thales signed along with the Moving Parties, but the enforceability of that 2023 Term Sheet is a side issue that has no bearing on the Joint Motion to Dismiss. Thales’s Response improperly raises the enforceability of this contract by phrasing the “Statement of the Issue” as follows: “Whether the [] 2023 Term Sheet . . . may be relied upon by Gentex and Meta in the [] 2024 Settlement Agreement—to which Thales is not a party—to transfer Thales’s patent rights to Meta . . .” *See* Resp. at 1. As noted above, however, the Joint Motion to Dismiss may be granted based solely on the release and covenant not to sue by **Gentex** in the 2024 Settlement Agreement, not on any assignment of patent rights by **Thales** in any agreement. The 2023 Term Sheet is thus **not** relied upon by Gentex and Meta for any purpose related to the Joint Motion to Dismiss. Thales’s request that the Court delve into the enforceability of the 2023 Term Sheet is therefore a procedurally and substantively improper request for the Court to issue an advisory opinion—without a complete factual record—about the 2023 Term Sheet, which is not properly part of this case and has no bearing on dismissal.

If the Court were, however, inclined to analyze the 2023 Term Sheet (notwithstanding that the result of any such analysis would have no bearing on whether this case should be dismissed), Thales misstates and omits critical facts regarding the 2023 Term Sheet’s formation. Even under its

3 kpccewtcvy"vgnkpi <*"3+"Vj crgu"f qgu"pqv" f gp{ "vj cv"Vj crguu"Ej kgh"Qr gtcvki "Qhlegf"uki pgf "vj g"4245"
 4 Vgto "Uj ggV [REDACTED] ="*4+"Vj crgu"cf o ku"vj cv"vj g"4245"Vgto "Uj ggV"
 5 [REDACTED] ="*5+" [REDACTED]
 6 [REDACTED] ="cpf "*"6+"chgt"vj g"4245"Vgto "
 7 Uj ggV'y cu"gzgewgf ."O gvc" [REDACTED]
 8 [REDACTED]
 9 [REDACTED] 0"Vj gtg"ku"pq"rgi cnf qextkpg"vj cv"
 : cmqy u"Vj crgu"q"övcng"dcenö"ku"uki pcwtg"qp"vj g"dkpf kpi "4245"Vgto "Uj ggV"0"Dw"ci ckp. "vj g"Eqwtvpggf "
 ; pqv'tgcej "cp{ "kuwg'tgrcygf "q"vj g"4245"Vgto "Uj ggV"kp"qtf gt"q"i tcpv"vj g"lqkp"O qvqp"cpf "f kuo ku"vj ku"
 32 ecug'y kj "r tglwf leg0'

33 II. BACKGROUND

34 kp"4234."Vj crgu"nlegpugf "q"i gpvgz "egtckp"r cvgpv"tki j w"y kj "gzenwukxk{ "kp"egtckp"hgfn u"qh
 35 wug0"See F m0P q0359/6"cv"; 658"vj g"ö4234"Nlegpug"Ci tggo gpvö+0"Vj qug"nlegpugf "r cvgpw"lpenmf gf "
 36 cm'qh"vj g'r cvgpw"cv"kuwg"kp"vj ku"iki cvkp."cpf "vj g"hgfn u"qh"wg"nlegpugf "gzenwukxgn{ "q"i gpvgz "lpenmf gf "
 37 gpvgtckpo gpv"cpf "i co kpi . "y j lej "ctg"vj g"qpn{ "tgrgpcpv"hgfn u"qh"wg"cmgi gf "q"dg"cr r ncedng"q"O gvcu"
 38 ceewugf "Qewwu"r tqf weu"kp"vj ku"ecug0"See id0cv46. "490'

39 kp"4245."i gpvgz."O gvc."cpf "Vj crgu"uki pgf "c"dkpf kpi "Vgto "Uj ggV"vj cv."co qpi "qyj gt"vj kpi u."
 3: [REDACTED]
 3; [REDACTED] 0"See Gz0D."F m0P q0359/70"Chgt"uki plpi "vj g"
 42 4245"Vgto "Uj ggV."Vj crgu" [REDACTED]
 43 [REDACTED] 0'

44 kp"4246."i gpvgz"cpf "O gvc"dw"pqv"Vj crgu"fwg"q"ku"tghwucn"gpvgf "kpq"q"mipi gt"Ugwgo gpv"
 45 Ci tggo gpv0"See Gz0C."F m0P q0359/6."cv"4680"Vj cv"4246"Ugwgo gpv"Ci tggo gpv"cwcej gf "vj g"4245"
 46 Vgto "Uj ggV"cu"cp"gzj kdk'dgecwug"vj g"4245"Vgto "Uj ggV"gzr tguun{ "eqpgo r mcygf "vj cv" [REDACTED]
 47 [REDACTED] 0"See id."cv"4=Gz0D."F m0P q0'
 48 359/7."cv"30"Vj g"4246"Ugwgo gpv"Ci tggo gpv" [REDACTED]
 49 [REDACTED] "*"see Gz0C."F m0P q0359/6."cv"8="kp"qyj gt"
 4: y qtf u."vj g'tgrgpcpv"r qtckpu"qh"vj g"4246"Vgto "Uj ggV"vj g'tgrgcug"cpf "eqxgpcpv"pqv"q"uwg"d{ "i gpvgz"q"

Meta) are expressly binding and effective *regardless of anything that may happen to the separate 2023 Term Sheet*. Thus, the enforceability of the 2023 Term Sheet could not affect in any way the release and covenant not to sue that Gentex granted to Meta in the 2024 Settlement Agreement, which resolves all of the claims in this case. *See* Ex. A, Dkt. No. 137-4, at 6 (§IV.10 of the 2024 Settlement Agreement [REDACTED]).

III. DISMISSAL WITH PREJUDICE IS APPROPRIATE

A. There Is No Basis To Continue This Litigation

Thales's responsive brief reflects that the facts pertinent to dismissal with prejudice are wholly undisputed. Gentex, which brought all of the claims in this case, moves to dismiss all of its claims with prejudice. *See* Mot. at 1, 3. Meta, the defendant for each of those claims, joins the motion. *Id.* The basis of Gentex's and Meta's Joint Motion is the release and covenant not to sue by Gentex to Meta in the 2024 Settlement Agreement, and that release and covenant not to sue stand separate from the 2023 Term Sheet and apply no matter what happens to the 2023 Term Sheet. *See* Ex. A, Dkt. No. 137-4, at 6. The Court should end its inquiry there and grant the Joint Motion to Dismiss.

Thales has no claims in this matter¹ and, thus, has no basis to oppose dismissal. Thales does not—and cannot—dispute that the 2024 Settlement Agreement between Gentex and Meta grants Meta a release and a covenant not to sue with respect to all claims in this case, which are all Gentex's claims. That release and covenant divests the Court of subject-matter jurisdiction over all claims. *See* Mot. at 2 (citing *Dow Jones & Co. v. Abblaise Ltd.*, 606 F.3d 1338, 1348 (Fed. Cir. 2016)); Ex. A, Dkt. No. 137-4, at II.1, II.2, IV.10. Since there are no other claims in the case, the Court has nothing further to do but dismiss it with prejudice.

Thales's desire to hold dismissal hostage in order to obtain an advisory ruling on an issue that is not properly before the Court regarding the 2023 Term Sheet is improper. The status of that 2023 Term Sheet simply has no bearing on the Joint Motion to Dismiss. Gentex had all of the rights relevant

¹ Thales expressly denied in its interrogatory responses that it sought relief of any kind from Meta. *See* Ex. C, Dkt. No. 138-3, at 20, 24, 27.

to the claims in this case (which is why only Gentex asserted any claims), Gentex released them all in the 2024 Settlement Agreement with Meta, and that release is not contingent on the 2023 Term Sheet. *See* Ex. A, Dkt. No. 137-4; Mot. at 2. Therefore, Gentex’s release and covenant not to sue in the 2024 Settlement Agreement with respect to the rights that Gentex undisputedly had are sufficient to resolve all claims presently before the Court and to require dismissing those claims with prejudice

B. Thales’s Request for Relief Is Procedurally Improper

Thales does not oppose dismissal of this action “provided that the Court holds that the rescinded [2023] Term Sheet is not binding on Thales or is void.” *See* Resp at 12. As discussed above, the 2023 Term Sheet’s enforceability has no bearing on any claim or defense in this case, so the issue is not properly before the Court, and regardless, the Court does not need to resolve this question in order to rule on the Joint motion. In addition, Thales’s request for relief is also procedurally improper for the following two reasons.

First, Thales made its improper request for relief for the first time in an opposition brief. “[A] request for affirmative relief is not proper when raised for the first time in an opposition.” *See Smith v. Premiere Valet Services, Inc.*, No. 2:19-cv-09888-CJC-MAA, 2020 WL 7034346, at *14 (C.D. Cal. Aug. 4, 2020); *see, e.g., Finjan, Inc. v. Blue Coat Sys., Inc.*, No. 13-cv-03999-BLF, 2015 WL 3630000, at *13 n.8 (N.D. Cal. June 2, 2015) (refusing “a request for relief [because it is not] properly presented in an opposition brief”); *Thomason v. GC Servs. L.P.*, No. 05cv0940-LAB (CAB), 2007 WL 9770702, at *6 (S.D. Cal. July 16, 2007) (“[T]he court rejects any discovery-related or other requests for affirmative relief Plaintiffs attempt to piggy-back on their Opposition as inappropriate, untimely, and obfuscating.”). Observing this procedural requirement is an important due process safeguard at least because the Moving Parties have had no opportunity to take discovery from Thales to test the factual assertions underpinning Thales’s request.

Second, Thales’s opposition is effectively a motion for summary judgment regarding a contract question that does not comply with Paragraph 9 of this Court’s Standing Order In Civil Cases. Paragraph 9 sets forth this Court’s rules for how summary judgment motions must proceed, but Thales did not follow any of them. For example, Paragraph 9.c.1 requires that Thales file a Supporting Separate Statement that lists the allegedly undisputed material facts and supporting evidence alongside

the other party's response and supporting evidence, which Thales did not do. Paragraph 9.d requires that Thales provide citations to the evidentiary record, which again Thales did not do—and which it could not do because there is no such factual record because that issue has nothing to do with the claims in this case. *See, e.g.*, Resp. at 3 n.2 (“Thales does not cite specific communications with Gentex’s counsel here nor includes any written communications as exhibits.”). At every step, Thales has flouted this Court’s rules requiring an orderly approach to summary judgment. This Court should refuse to entertain Thales’s summary judgment motion-in-disguise.

C. There Is No Basis To Void or Rescind the 2023 Term Sheet

As noted above, the 2024 Settlement Agreement between Gentex and Meta fully resolves all claims at issue in this lawsuit and, thus, is alone sufficient to dismiss this action with prejudice. Under these circumstances, the Moving Parties object to the Court issuing any advisory opinion interpreting the 2023 Term Sheet or addressing its enforceability against Thales based on Thales’s improper request for such relief in its opposition brief. But to the extent the Court is inclined to reach that contractual dispute, the 2023 Term Sheet should not be deemed void or rescinded for the reasons discussed below.

1. *The 2023 Term Sheet Is a Binding Agreement*

The 2023 Term Sheet provides on its face all of the elements of an enforceable agreement²: (1) parties capable of contracting; (2) consent; (3) a lawful object; and (4) consideration. *See* Cal. Civ. Code § 1550³:

(1) There is no dispute that Gentex, Meta, and Thales are all validly incorporated companies and thus competent parties capable of contracting.

(2) Duly authorized representatives of Gentex, Meta, and Thales each signed the 2023 Term Sheet, thus demonstrating the consent of each party. *See* Ex. B, Dkt. No. 137-5, at 5–6;

² As a settlement agreement, the 2023 Term Sheet is subject to the same legal principles as contracts generally. *See Monster Energy Co. v. Schechter*, 7 Cal. 5th 781, 789 (2019).

³ The 2023 Term Sheet expressly states that [REDACTED] California law (*see* Ex. B, Dkt. No. 137-5, at 5), and Thales agrees that California law applies (*see* Resp. at 7 n.4).

Rodriguez v. Oto, 212 Cal. App. 4th 1020, 1027 (2013) (“[A] signature on a written contract is an objective manifestation of assent to the terms set forth there.”).

(3) An agreement to settle litigation and grant patent rights in exchange for money is a lawful object for an agreement. *See, e.g., Buckhorn v. Hettinger*, No. 15-cv-04352-TSH, 2021 WL 3861436, at *6 (N.D. Cal. Aug. 30, 2021) (“The object of the settlement is lawful as it requires Hettinger to make a settlement payment and agree to various non-monetary terms in exchange for Plaintiff’s release of their claims against him.”). As discussed further below, the 2023 Term Sheet is not unlawful, contrary to Thales’s contention that it constitutes an unlawful patent misuse.

(4) Each party received valuable consideration under the 2023 Term Sheet. For its part, Thales received [REDACTED]

[REDACTED]. *See* Ex. B, Dkt. No. 137-5, at 4 [REDACTED].⁴

Thales raises four arguments as to why the 2023 Term Sheet does not satisfy the elements of a binding, enforceable agreement, but all of those arguments are meritless.

First, the 2023 Term Sheet is a binding agreement, not merely an “agreement to agree” as Thales contends. As background, the Term Sheet provides:

[REDACTED]

⁴ Thales argues that the Term Sheet is “unconscionable” because it received “no consideration in return” for granting a license to its patents, but that is simply false, as discussed herein. *See* Resp. at 10.

1 See Ex. B, Dkt. No. 137-5, at 1. The 2023 Term Sheet [REDACTED]
 2 [REDACTED]. See *id.* To the extent there was any doubt that the 2023 Term Sheet was binding,
 3 the Term Sheet later reiterates that [REDACTED]
 4 [REDACTED]. See *id.* at 5. The fact that Meta, Gentex, and Thales did not [REDACTED]
 5 [REDACTED] does not imply that the 2023 Term Sheet was
 6 not binding to begin with. See *Blix St. Recs., Inc. v. Cassidy*, 191 Cal. App. 4th 39, 48 (2010) (“When
 7 parties intend that an agreement be binding, the fact that a more formal agreement must be prepared
 8 and executed does not alter the validity of the agreement.”); see also *Niazi Licensing Corp. v. St. Jude*
 9 *Medical S.C., Inc.*, No. 0:17-cv-05096-WMW-DJF, 2024 WL 195574, at *4 (D. Minn. Jan. 18, 2024)
 10 (“[T]he parties’ disputes that arose later while drafting the formal settlement document do not
 11 undermine the binding nature of the settlement agreement reflected in [the earlier] email.”). But even
 12 if it did imply that the 2023 Term Sheet was not initially binding, [REDACTED]
 13 [REDACTED]
 14 [REDACTED] the 2023 Term Sheet then became binding to the extent it was
 15 not binding already (which it was).

16 **Second**, Thales argues that there is an ambiguity in the 2023 Term Sheet as to whether it was
 17 binding on execution and that such ambiguity should be construed against the drafter, but Thales does
 18 not identify any specific language that is ambiguous, instead inviting the Court to “strain to create an
 19 ambiguity where none exists . . . simply because the parties urge different interpretations.” See *Int’l*
 20 *Bhd. of Teamsters v. NASA Servs., Inc.*, 957 F.3d 1038, 1044 (9th Cir. 2020). In fact, Thales has
 21 admitted that [REDACTED]. See Ex. D. Moreover, there is no record of
 22 Thales ever [REDACTED]
 23 [REDACTED]
 24 [REDACTED].

25 **Third**, Thales argues that the 2023 Term Sheet omits a material provision about [REDACTED]
 26 [REDACTED], but how [REDACTED]
 27 [REDACTED] is not the kind of material term that prevents contract formation, even if the Court
 28 were to determine that that term is “an important term that affects the value of the bargain.” See

1 *Facebook, Inc. v. Pac. Nw. Software, Inc.*, 640 F.3d 1034, 1037–38 (9th Cir. 2011).⁵ Indeed, Thales
 2 cites no cases holding invalid a contract with that type of alleged omission. *See* Resp. at 8. That is
 3 because, in order for contract formation to fail, the omitted term must make the contract not
 4 “sufficiently definite for a court to determine whether a breach has occurred, order specific
 5 performance or award damages,” and the allegedly missing term in this situation does not rise to that
 6 level. *See id.* This Court could readily determine whether [REDACTED]
 7 [REDACTED], and if [REDACTED], then award an appropriate amount of damages. *See id.*
 8 This Court therefore has all of the information it needs to assess performance and to remedy any failure
 9 in performance, such that the allegedly missing term is not the type of omission that is fatal to contract
 10 formation.

11 ***Fourth***, Thales argues that part of the 2023 Term Sheet has an unlawful object, specifically
 12 patent misuse, but this theory is baseless. In a nutshell, Thales asserts that the Term Sheet’s
 13 “perpetual” license of certain patents from Thales to Meta automatically leads to patent misuse, which
 14 in turn is contrary to public policy and therefore renders the entire Term Sheet void under California
 15 Civil Code Sections 1441 and 1608. *See* Resp. at 10–11. Thales cites no authority for its novel theory
 16 that contorts the patent misuse doctrine beyond recognition to apply to this fact pattern, and there are
 17 at least three gaping legal and factual flaws in Thales’s logic:

18 (i) As Thales admits, patent misuse “is an equitable defense to patent infringement,” which
 19 does not apply to this situation. *See* Resp. at 10 (quoting *U.S. Philips Corp. v. ITC*, 424 F.3d
 20 1179, 1184 (Fed. Cir. 2005)). Thales, which owns the patents, is not defending against any
 21 claims of patent infringement, rendering the notion of patent misuse facially inapplicable.
 22 Moreover, as noted above, the doctrine is an equitable defense that is supposed to protect
 23 accused infringers from overpaying for expired patents, so it makes no sense for Thales (the
 24 patent owner) to be equitably protected from Meta (the accused patent infringer). Applying
 25

26 _____
 27 ⁵ Thales’s argument that there is some supposed ambiguity about [REDACTED]
 28 [REDACTED] is also in stark contrast to Thales’s repeated communications with counsel for
 Meta and Gentex indicating that [REDACTED].

1 the patent misuse doctrine to protect Thales (the patent owner) would be an unprecedented
 2 inversion of the doctrine for which Thales cites zero authority.

3 (ii) The patent misuse doctrine holds that “a patentee’s use of a royalty agreement that projects
 4 beyond the expiration date of the patent is unlawful,” but, as Thales also admits, the 2023 Term
 5 Sheet does not [REDACTED]. See Resp. at 10 (quoting *Brulotte*
 6 *v. Thys Co.*, 379 U.S. 29, 32 (1964)). Instead, the Term Sheet requires [REDACTED]

7 [REDACTED]
 8 [REDACTED]. See Ex. B, Dkt. No. 137-5, at 4 [REDACTED]
 9 [REDACTED]. Thales appears to argue that because the Term Sheet uses the term “perpetual” [REDACTED]
 10 [REDACTED]
 11 [REDACTED], but Thales offers no
 12 basis for [REDACTED].

13 See Resp. at 11. In other words, Thales does not cite any evidence, and there is nothing in the
 14 2023 Term Sheet, indicating that any portion of Meta’s [REDACTED]
 15 [REDACTED]. The only
 16 thing that is “perpetual” under the Term Sheet is [REDACTED]

17 [REDACTED]
 18 [REDACTED]. And a “perpetual” license grant is not *per se* a patent
 19 misuse; to the contrary, the Federal Circuit regularly enforces licenses described as
 20 “perpetual.” See, e.g., *VLSI Tech. LLC v. Intel Corp.*, 87 F.4th 1332, 1349–52 (Fed. Cir. 2023);
 21 *Molon Motor & Coil Corp. v. Nidec Motor Corp.*, 946 F.3d 1354, 1357–64 (Fed. Cir. 2020);
 22 *Jacobs v. Nintendo of Am.*, 370 F.3d 1097, 1098–99 (Fed. Cir. 2004).

23 (iii) Even if the square peg of patent misuse could somehow be shoehorned into the round hole
 24 of the 2023 Term Sheet, the 2023 Term Sheet [REDACTED]

25 [REDACTED]
 26 [REDACTED]
 27 [REDACTED] See Ex. B,
 28 Dkt. No. 137-5, at 5 [REDACTED]. “California cases take a very

liberal view of severability, enforcing valid parts of an apparently indivisible contract where the interests of justice or the policy of the law would be furthered.” *Adair v. Stockton Unified School Dist.*, 162 Cal. App. 4th 1436, 1450 (2008). In this situation, it is straightforward to enforce the valid parts of the contract and excise any *de minimis* unenforceable portion, because all that would be required is acknowledging (as Meta and Gentex already do) that [REDACTED]

[REDACTED]. The entire performance of the contract would be undisturbed, [REDACTED]

2. *The 2023 Term Sheet Should Not Be Rescinded for Mistake of Fact or Fraud*⁶

Thales argues that the Court should rescind the 2023 Term Sheet because Thales’s acceptance “was given by mistake, or obtained through . . . fraud, or undue influence, exercised by or with the connivance of the party as to whom he rescinds, or any other party to the contract jointly interested with such party.” *See* Resp. at 9 (emphasis omitted). Thales notably does not contend that [REDACTED]

[REDACTED]. To the contrary, Thales has admitted that [REDACTED] *See* Ex. D. Instead, the basis of the

⁶ Meta was not involved in all of the communications between Thales and Gentex that form the basis of Thales’s allegations of mistake of fact and fraud, and Meta has not had any opportunity to take discovery into those communications. As a result, Meta presently takes no position on the factual issues regarding any alleged mistake of fact or fraud insofar as they depend on communications that Meta was not part of. But Meta agrees that Thales cannot rescind or void the 2023 Term Sheet based on a mistake of law. Additionally, Meta’s lack of discovery on the alleged mistake of fact and fraud is an independent reason why it would be prejudicial and improper to address Thales’s arguments regarding the 2023 Term Sheet in the present context.

1 alleged mistake of fact or fraud is that [REDACTED]
2 [REDACTED]
3 [REDACTED] Thales's arguments are both factually and legally baseless.

4 To begin, it is simply untrue that [REDACTED]
5 [REDACTED] *See*

6 Resp. at 9. To the contrary, [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]⁷ [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]

27 ⁷ If the Court requests, Gentex is happy to provide any of the documents discussed in this section for
28 review.

1 [REDACTED]
 2 [REDACTED] Thus, when Thales claims
 3 that [REDACTED]
 4 [REDACTED] (Resp. at 9), it is inaccurately reporting [REDACTED]
 5 [REDACTED]
 6 [REDACTED].

7 All of this context, however, is beside the point, because nothing that Thales asserts in its brief
 8 amounts to a mistake of fact or fraud that would allow it to take back its signature on the 2023 Term
 9 Sheet. Thales had [REDACTED]
 10 [REDACTED] prior to signing it on December 21, 2023. *See* Resp. at 2–3, 9–10. Thales’s real allegation
 11 is that it misunderstood the operation of the 2023 Term Sheet—notwithstanding Thales’s
 12 representation by sophisticated counsel—as a result of [REDACTED]
 13 [REDACTED].⁸ *See* Resp. at 3. If anything, that allegation amounts to only a mistake of law, and
 14 Thales has no recourse in that situation. *See Hedging Concepts, Inc. v. First Alliance Mortgage Co.*,
 15 41 Cal App. 4th 1410, 1421–22 (Cal. Ct. App. 1996) (explaining that “courts will not set aside
 16 contractual obligations, particularly where they are embodied in written contracts, merely because one
 17 of the parties claims to have been ignorant of, or to have misunderstood, the provisions of the
 18 contract”).

19 Even if the Court did consider this scenario a mistake of fact rather than a mistake of law,
 20 however, Thales would still have no recourse in this situation. To rescind a contract for mistake of
 21 fact, Thales must show that it “does not bear the risk of the mistake.” *Donovan v. RRL Corp.*, 26 Cal.
 22 4th 261, 282 (2001). And “the risk of a mistake must be allocated to a party where the mistake results
 23 from that party’s neglect of a legal duty.” *Id.* at 283; *see* Cal. Civ. Code § 1577 (providing that mistake
 24 of fact is not available where there is a “neglect of a legal duty on the part of a person making the
 25 mistake”). It is well settled under California law that a contracting party’s failure to read and
 26

27 ⁸ This argument is in stark contrast to Thales’s earlier admission that [REDACTED]
 28 [REDACTED]

wpf gtucpf "c"vgtu "kp"vj g'eqpvtcev"ku"öcwtkdwdcng"vq"j ku"qy p'pgi ngexö"Casey v. Proctor."7; "Ecr04f"; 9." 326627"*3; 85="see also, e.g.."Estate of Eskra."9: "Ecr0Crr07vj "42; .448652"*4244+"*j qrf kpi "vj cv"c" r ctv{öu"öhcöwtg"vq"tgcf "jcp_Ci tggo gpv"cpf "eqpuwv"y kj "lj gt"cwqtpg{ "_o gcpu"vj cv"lj g"did"dgct"vj g'tkum" qh"j gt"o kücngö="In re Marriage of Hill & Dittmer."424"Ecr0Crr06vj "3268."3276677"*4233+"*j qrf kpi " vj cv"c"r ctv{öu"öhcöwtg"vq"vcng"tgcuqpcdng"uogr u"vq"dgeqo g"cy ctg"qh"vj g'eqpvgpw"qh"vj g"Ci tggo gpv" r ctvewrctn{ "i kxgp"j gt"dwukpguu"dceni tqwpf."j gt"cy ctgpguu"qh"gtcrktg"ftchm."cpf"j gt"ceeguu"vq"eqwpugn" r tgenmf gu"c"kp"lpi "j"vj cv"lj g'gpvtgf "kp"vj g"Ci tggo gpv"lpxqmwvctn{ ö="Tguvgo gpv"4pf +Eqpvtcev" È379."eo 0'D"*3; : 3+"*öI gpgtcm{."qpg"y j q"cuugpw"vq"y tkkpi "ku"rtguwo gf "vq"npqy "ku"eqpvgpw"cpf ecppqv"guerc g"dgkpi "dqwpf "d{ "ku"vgtu u'o gtgn{ "d{ "eqpvgpf kpi "vj cv"j g"fk "pqv'tgcf "vj go =j ku"cuugpv"ku" f ggo gf "vq"eqxgt"wpnpqy p"cu"y gm"cu"npqy p"vgtu uö+0Vj crgu"cf o ku"vj cv" [REDACTED] [REDACTED] "cpf. [REDACTED] "uki pgf "vj g"4245" Vgtu "Uj ggvt"qp"F gego dgt"430"See Tgur 0cv'50"Y j gtg."cu"j gtg."c"r ctv{ [REDACTED] [REDACTED] [REDACTED] "vj g"r ctv{ "ödqtg"vj g"tkum"qh"j gt"o kücngö""See Estate of Eskra."9: " Ecr0Crr07vj "cv'44; 64520"Vj crgu"vj wu"dqdg"vj g'tkum"qh"ku"o kücng"qh'hcev"*kh"vj gtg"ku"c"o kücng"qh'hcev" cv'cm"cu"qrr qugf "vq"cv'o quv'c"o kücng"qh'hcy + "cpf "vj g"ncy "f qgu"pqv'r gto k'tguckuqp0" Ncuw{."Vj crgu"dtlghn{ "eqpvgpf u"vj cv"ktguckpf gf "vj g"vgtu "lj ggvd{ "wpkrvgtcm{ "öy kj f tcy kpi "ku" uki pcwtg"ltqo "vj g"4245_Vgtu "Uj ggvt"chgt"uki plpi "k0"See Tgur 0cv'6670"K"ku"wpertgct"y j gyj gt"Vj crgu" ku"cumkpi "vj g"Eqwtv"vq"j qrf "vj g"4245"Vgtu "Uj ggvtguckpf gf "qp"vj ku"dcuku."dw"gxgp"kh"ku"ku."Vj crgu"fggu" pqv"j cxg"vj g"wpkrvgtcn"tki j v"vq"y kj f tcy "ltqo "vj g"4245"Vgtu "Uj ggvt"See Cal-Murphy, LLC v. MG Rests., Inc.."P q0C3583; : .4236"Y N"38; 7522."cv", : "Ecr0E0Crr0Crt052."4236+"*wpr wdrukj gf +*öC" r ctv{ "ecppqv"wpkrvgtcm{ "y kj f tcy "ltqo "vj g"vgtu u"qh"ku"eqpvtcev"d{ "o gtgn{ "000emcko kpi "kp"c"r ngcf kpi " vj cv"vj g"eqpvtcev"f qgu"pqv'gzkuö="Douglas v. U.S. District Court for C.D. Cal.."6; 7"Höf"3284."3288" *, vj "Ek04229+"*öjC_"r ctv{ "ecpö"wpkrvgtcm{ "ej cpi g"vj g"vgtu u"qh"c"eqpvtcev"ku"o wuv"qdvckp"vj g"qvj gt" r ctv{ öu"eqpugpv"dghgtg"fqkpi "uqö="see generally Gz0D."F m0P q0359/7"*pq"r tqxkukqp"ht"y kj f tcy cn" qt"wpkrvgtcn'o qf k'hecukp"kp"vj g"4245"Vgtu "Uj ggvt"

IV. CONCLUSION

Hqt"vj g'hqtdgi qlpi 'tgcuppu."vj g'IdkpV'O qvqp'vq'F kuo ku'uj qwr'f'dg'i tcvpf."cpf"vj g'Eqtvt'uj qwr'f
 pqv'cf f tguu"Vj cngu'u'o qqv'cpf 'r tqegf wcm' 'ko r tqr gt'tgs wguv'q'tguelpf "cpf 'xqlf"vj g"4245"Vgto 'Uj gg'v"
 pqv'cv'kuuwg'lp"vj ku'hski cvqp0'

Dated: February 7, 2024

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SIGNATURE ATTESTATION

Under Local Rule 5-1(i)(3), I attest that I have obtained concurrence in the filing of this document from the other signatories.

Dated: February 7, 2024

A handwritten signature in blue ink, appearing to read 'M.S. Warren', is written over a horizontal line.

Matthew S. Warren